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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

Carmen Powell, Plaintiff/Petitioner/Movant vs Defendants/Respondent/s City of Chula Vista; Chula Vista Police Dept, Det Ruth Hinzman; Agt Anderson; Agt Oyos, Sgt Cervantes; and person and entities unknown, City of San Diego and San Diego County Protective Services Workers, Julie Smith, Rebecca Slade, Nadia Najors, Megan Petsinger, Lucia Garcia, Deborah Davies, LCSW, Dr. H. Grewal, Dr. M. Mirkarimi, Diana Chase, Carolyn Levenberg, and entities and persons unknown Does 1 to 100	Case No. '07 CV 1836 JAH (JMA) **COMPLAINT FOR DAMAGES ARISING OUT OF TORT AND VIOLATIONS OF STATE AND FEDERAL CIVIL RIGHTS, IN EXCESS OF $25,000; AND FOR INJUNCTIVE RELIEF** **HONORABLE JOHN A. HOUSTON** DEPT: 11

JURISDICTION AND VENUE

This action for damages arises under the laws of the United States of America, in particular, Title 42 of the United States Code sections 1983, 1985 and 1986. This Court has subject matter jurisdiction under 28 United States Code sections 1331. Venue is proper in this judicial district under pertinent law, including, inter alia, 28 United States Code sections 1391 (b), (c).

CASE HISTORY

In or about August 2006, Plaintiff Carmen Powell lived with her four minor children and husband in Chula Vista, California and Plaintiff continues to reside at same residence. On or about August 8th or 9th, 2006 one of the Plaintiff's minor children (because of privacy issues Plaintiff will refer to children by date of birth) 11/24/97 informed her that the Plaintiff's husband had hit the child with a belt, because Plaintiff had previously instructed her husband never to hit any of the children and Plaintiff was concerned that her husband had become more difficult to reason with because of his deterioration of his physical and psychological issues and he had started drinking beer, Plaintiff asked her husband to seek help from VA services to help him find a place to live. Plaintiff had written a letter on or about August 10, 2006 to housing reporting the finalization of her youngest child's 07/24/03 adoption and she informed the worker of her intent to move and gave notice that her husband would not be moving with the family, her husband was clearly angered by the request and her decision and her husbands response was **"if I can't live here no one can".**

On or about August 14, 2006 Plaintiff was at home with her three minor children when the doorbell rang and she looked out to see two women, she immediately answered the door and was informed that they were from CPS and had received a referral regarding abuse of one of the minor children in the home, (to protect the children's privacy Plaintiff will refer to the children by date of birth) the child is question was 11/24/97, there were two other children at home 06/03/00 and 07/24/03. Plaintiff, being a licensed foster home immediately allowed the workers into her home, stating to the workers "you are welcome at anytime". Plaintiff advised the workers that the family had just gotten up and directed to children to watch TV in the family room while she spoke with the social workers. The social workers interviewed the Plaintiff and took notes, she walked both social workers through the house upstairs and down stairs of the home, the children were all barefoot and in t-shirts and shorts, Plaintiff voluntarily showed the social workers that there were no injuries to any of her children, by even pulling up the shirts to expose their torsos and back, and at no time did **Nadia Najors attempt to do a body check of any of the children in the home, she would have no right to physically touch any**

child nor did she attempt to.

The social workers asked if they could speak to the children and that they wanted to speak with the child 11/24/97 and I directed them to the family room where the children were watching TV and playing, Plaintiff continued to move about her home in a normal manner, as the children were speaking in a normal tone of voice and Plaintiff could certainly hear the conversation nor was she ever asked that these workers speak to the children alone. When the social workers completed their interview they asked to speak with Plaintiff's other daughter 06/03/00, when the were through talking, Plaintiff showed these social workers the food pantry, showing them the whole house which is a 4 bedroom, 2 ½ bath home, which had all utilities, including cable and telephone and is almost approximately 2,000sq ft. Because the Plaintiff is a licensed foster home these social workers did not make any request that she purchase a table, additional beds, or for her to get utilities nor that I get a larger home for my children, to the contrary the social workers note that the house was "clean, cluttered with toys and the child 07/24/03 seemed appropriate with the mother".

I answered any and all questions put to me by these social workers, I told them that I was having problems with my husband and that he had hit my daughter 11/24/97 with a belt and she reported this to me and I told him that he had to "move out of the home or that I would be moving", I informed them that I had wrote a letter to housing on or about August 10, 2006 to report the finalization of my sons adoption and they my plan was to be moving and reported that my (**husband would not be moving with the family).** I informed the social workers that my husband was becoming more difficult to deal with an that he was on a lot of medications and had recently started drinking beer, I also told them that he was very angry at me when I told him that he should go to the VA and asked for them to help him find another place to live, and he threatened me by saying **"if I can't live here no one can".** My daughter 11/24/97 never told the workers that she had a bruise on her arm, she also told the workers that ("I told my mom that he hit me for no reason and my mom told him never to put his hands on me").

The social workers conducted their interviews and asked if they could come back an interview my teenage daughter when she returned from school, and I agreed for them to come back at about 4:00pm to interview my daughter 05/11/90, and they left my home, as they walked down the drive way one of the workers was on her cell phone, a few minutes later she returned to my door asking me if I could make arrangements for my daughter to have a physical and I stated that I would. I called the clinic and because this would have been a well check up, I was given an appointment in approximately two weeks, I called an informed the social worker of this information and then I was asked could I take her to their doctor if they could receive a sooner appointment, and I agreed.

Social worker Nadia Najors and Megan Petsinger, returned to my home at 4:00pm as agreed to interview my daughter 05/11/90, they set in the living room then moved to the dining room table while they made notes, when they completed their interview they walked over to the family room and said good by, my daughter 11/24/90 who was watching TV and playing with her Bratz doll. “she was not overly medicated which to me would constitute an emergency, if they truly believed that my daughter was drugged”. On or about August 15, 2006 I took my daughter to Rady’s Children’s Hospital for a physical, I completed the paper work then I was met by Social Worker Megan Petsinger, she stated to me “mom we’re just gona do a height and weight and call you right in”, and I stated ok, however when the time went on, I continued to have the front desk check to see what was taking so long and they kept telling me that the social worker we be out in a minute, and finally she called for me.

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When I entered the exam area I saw a nurse with my daughter and I was told that it would be ok for the nurse to watch her until I met with the doctor. Social worker Megan Petsinger took me to an office and introduced me to Dr. Chase. When Dr. Chase asked me about her scars, medication and medical history and her treatment in therapy and school behaviors, I was very candid with my daughter’s history right down to the scars on her body when she was placed with me, her long history of therapy, down to her potty accidents that had gotten much better and that she was currently taking medications without side effects and monitored by her psychiatrist and that we had just saw him at the end of June. I left that office with my daughter and I think back now what my daughter said to me, “Mommy why did the lady lie to you”, and I said lie about what “the lady said that she was going to call you in and I kept asking for you, but she never did”, I simply dismissed what my daughter was attempting to say and had no idea what was waiting and planned for my family. I was to later discover not by my court appointed attorney, not by any social worker but thought my own curiosity regarding this doctor and why she lied in her report as to what I had said, I found out that Dr. Chase was Nurse Chase. My daughter had also told me that she had heard my husband saying "bad things about me when he was talking to someone on the phone", I instructed her not to pay attention to what he was saying and assured her that he would be moving.

On August 17, 2006 Plaintiff was at home with her three minor children when the door bell rang and she looked out and saw all of these police, some in uniform some not, however she did recognize the social worker Nadia Najors, who was with them. Plaintiff answered the door and the Chula Vista Police department and others immediately stepped inside, **my children were playing and uninjured in their home**, there was a man with a black bag that almost knocked me over running up the stairs, and I was totally in shock, I was told that I was under arrest for **"spousal battery and terrorist threats",** which I did not know what the meant, my first thought was that someone had said that I had threaten the President, and they informed me that they were taking my children into protective custody. **I can still see the faces of my three children,** and I immediately told the police that I had never hit or threatened my husband and to call my adult son and have him take my children and I provided the police with my adult sons phone number.

I informed the police that my daughter 11/24/97 was on medication and of the special needs of my son 07/24/03 and they asked me for my daughters medication, I gave them a small amount. I had her medical records out because the agency she been out to the home, which supported what I was saying about my daughter and the Police removed those documents, never to return them to this day, nor do I know what they were searching for in my home, they did so without a warrant, consent, probable cause, or exigent circumstances. I asked them if they could not handcuff me in front of my children and I kissed each child and told the oldest 11/24/97 to look out for her baby sister and brother and the big brother would get them soon, because I knew that I never touched my husband, and **(there was no mention of child abuse).** However, I had no idea what nightmare and assault was about to fall upon my children and my entire family. The Chula Vista Police Department did not show me a warrant, for my children, they clearly had a plan of action, because they brought social worker Nadia Najors with them, they did not ask to search my home, they did not ask any of the children if they were injured, they had no probably cause because social worker Nadia Najors had told them, which I later learned that "we had no grounds to remove any of the children", I later learned that this seizure of my children was for CPS.

I was removed from my home, handcuffed and my three minor children left in my home with a house full of Police and a social worker and they even took my purse, stating to me that they were taking it for safe keeping by removing my purse, from my home and my house keys, this made no sense to me. I was taken to jail, stripped of my personal belongings, finger printed and photographed and I literally set shackled to a wall for hours, because an angry man said that I hit him, at that time I did not know that this was suppose to have happened without injury, and in front of my children, I later read that my children were witness to this assault (which never happened), according to Det. Heinzman. No one was speaking to me or providing me with information, until early evening when I was interviewed by Det. R. Heinzman. I answered her questions truthfully and told her that I had never hit L. Wilkerson or threatened him, she asked me questions about my daughter being abused and I told her how the children were disciplined, she asked me why my husband would make up these allegations and I told her because he was angry at me, because he hit my daughter and I told him that he had to move, and she told me that I had to remain there until this mess was straightened out. I knew that all of the children would be ok, because their brother would be picking them up, however I did not understand why I had to stay in jail until I could see the judge; I certainly had no money for bail for something that I did not do.

I later found out through a telephone call from my son that the children were turned over to CPS and that they were not releasing the children to him and that he had to wait and speak with a different social worker. On that Monday August 21, 2006 I was taken to the court house and was immediately told by the bailiff that I could return to jail and be released, that the case was not excepted, I never stepped foot into a courtroom regarding domestic violence. I had received notification form Nadia Najors that there was going to be a hearing in the juvenile court on August 22, 2006 regarding the children. On August 22, 2006, Defendant Rebecca Slade and Megan Petfinger filed a juvenile dependency petition pursuant to California Welfare and Institutions Code section 300. Therein, Defendant SLADE and PETSINGER made false and exaggerated allegations against Plaintiff Carmen Powell that she abused and neglected one of her minor children 11/24/97 without any articulable evidence giving rise to a reasonable suspicion that the minor 11/24/97, was in danger of any form of abuse or neglect, more support of this is that the Plaintiff had taken the child 11/24/97 to Rady's Children's Hospital just two days prior and the examination showed (a clean happy child, no signs of physical abuse noted, child was cooperative, further investigation needed to see if emotional abuse is noted, disposition home), also presented was a Child Abuse Index report that was dated **08/16/06** prepared by social worker Megan Petsinger and D. Chase at Rady's Children Hospital, which further indicates a "plan of action by this agency, the Chula Vista Police and D. Chase of Rady's Children's Hospital", this physical as reported by REBECCA SLADE and MEGAN PETSINGER by Dr. Chase at Rady's Children's Hospital in a detention report. The detention hearing in Juvenile Court on August 22, 2006, five days after the minors were removed from the home without a warrant to do so and without cause, no one at CPS would speak with the mother or her adult son, regarding contact, how the children were doing, the agency had literally cut off their phones. Defendant SLADE submitted fabricated and false evidence, and submitted perjured statements to the court with malicious intent. Based upon such fabricated ad false evidence, and perjured statements. The Plaintiff's first court appointed attorney told the Plaintiff just before the hearing "just go along with them", and the Plaintiff immediately thought that something was terrible wrong with this attorney, "they took my children for no reason and I will not go along with them". Defendant SLADE, requested on behalf of the agency that minor child 11/24/97 have no contact with the mother, however she could see the mothers husband and other family members, however Plaintiff soon learned that this to was a lie.

Not understanding what is happening and even though you have court appointed council, they never tell you what your rights are, other than be silent in court and let me speak for you. The attorney goes in a waves the reading of the report or petition that you have just received minutes before outside of court and have not even had time to read, let alone bring a witness on you behalf, and knowing the **detriment to the parent by doing so.** Later I was assigned another attorney or reasons unknown to me and I made it clear to my attorney that I wanted my children and on September 12, 2006 the agency files another petition (report) and ask for a four week continuance and for some reason my attorney jumps up and says "we agree your honor", however when I attempted to tell the judge "Your Honor they had no grounds to take my children", I was told to be quiet and there is no record of my statement. The agency had assigned this case to a senior protective worker DEFENDANT JULIE SMITH, as I continued to read through the fabricated reports I began to write to the Director of the agency Jean Shepard.

I knew nothing of receiving the reports or petitions prior to any hearings nor was I ever told by my attorney that you are entitled to respond to the report and to bring witnesses in defense of the accusations, or that you are required to receive these reports at least five days prior to the hearing, or even ask for a trial so I continued to write Jean Shepard. On September 25, 2006 I wrote to Ms Shepard, "**I am totally consumed with freeing my children from this illegal abduction, the court does now allow social workers to remove children, minus (exigent circumstance), warrant, the courts have also found that a police officer was not entitled to absolute immunity after placing a child in state custody where there was evidence the officer spoke with the social worker prior and there was evidence that described the collaborative (plan of action to deal with the situation),** which was Det. Hinzman, please see Malik v Arapahoe." I went on to explain to Ms Shepard that "my children are suffering stripped of their rights, subjected to evaluations, that I gave no consent to, this should not have happened based on lies and a total disregard of the law and our Constitutional Rights." I informed her how these social workers were lying in their reports to the court and signing her name to these false statements, I informed her that under the law the agency had no grounds to take my children and that what they were doing was illegal, minus exigent circumstance or immanent harm that they were traumatizing my children. I went on to tell Ms Shepard how my husband was mentally ill and had hit my daughter and was angry because I had asked him to leave, I told her that the social workers had lied about what my children had said during their interview in my home, they lied about what I had told them, that I had never been camping and the roll up beds could be roll up once deflated and that there were three air beds on for each minor child. I told her that they lied saying that there was only one picture of my 11/24/97 daughter on the wall, when there were four pictures, that there was not a lock on the refrigerator when they came, that my little son had broken a jar and I had put a temporary lock on the fridge and that the

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children had access to the pantry which held their snacks.

I went on to tell Ms Shepard that my children received what they called were love taps with my hand and time outs for five minutes, and I received a letter back from the assistant deputy Director Renee Santiago, telling me that Ms Shepard understood my concerns, however my children were removed by law enforcement when I was taken to jail for domestic violence and that I would need to go through the dependency court process to address my concerns.

I initially believed that reporting these lies in the reports to the director of the agency would help to bring my children home, however I was clearly mistaken I was met with more lies and retaliation and it was made clear to me by Marybeth supervisor of my public defender, she told me "we don't call social workers liars", and my question to her was why not when they are lying in court reports, she restated "it is something we just don't do".

COMPLAINT

DEFENDANT JULIE SMITH, was the senior protective worker who I eventually made contact with, it was almost a month we have had no communication with any of the children, the agency had pretty much turned off their phones we knew nothing regarding my children. During a brief interview by phone with Julie Smith, I informed her about the lies that the social worker REBECCA SLADE, NADIA NAJOR AND MEGAN PETSINGER had put into the reports and she assured me that she would make the necessary corrections if found. **North Hudson DYFS v. Koehler Family** (2001) The court explained "absent some tangible evidence of abuse or neglect, the Courts do not authorize fishing expeditions into citizen's houses. Mere parroting of the phrase "best interest of the child" without supporting facts and a legal basis is insufficient to support a Court order based on reasonableness or any other ground.

On 09/12/06 DEFENDANT JULIE SMITH, filed a report, again without prior notice and was recommending a four week continuance, she stated that 11/24/97 is detained in a group home, and she clearly states that the child is doing well in this detention, however I clearly learned later (IN DISCOVERY TURNED OVER IN THE 02/01/06 SERVICE LOGS) that according to her IEP dated

09/28/06 that my daughter was missing a lot of school because of severe behaviors problems, cursing, trying to run away, assaultive behaviors, spitting, running and screaming, this agency knew this child's prior history and had relative information to the contrary how my child was doing in my care and she put forth this "doing well", she also knew the baby 07/24/03 was clearly suffering and refusing to eat or drink in his foster home placement, the foster mother states her concerns for the child, and that my other daughter 06/03/00 continued to cry and wanted to go home, DEFENDANT JULIE SMITH continued to withhold information exculpatory information, and put forth this fabricated information that Plaintiff's children were doing fine, these intentional fabrications caused a detriment to all of the children, DEFENDANT JULIE SMITH knew what was happening to Plaintiff's children and continued to falsify and withhold information. K.H. through Murphy v. Morgan (7th Cir. 1990), State employee who withholds a child from their family may infringe on the family's liberty of familial association. Social workers could not deliberately remove children from their parents and place them with foster caregivers when the officials reasonably should have known such an action would cause harm to the child's mental or physical health. DEFENDANT JULIE SMITH, that Plaintiff's child 11.2497 had a long history of mental and emotional problems along with abandonment issues she knew that Plaintiff's children were begging for their family, as Plaintiff stated in a letter to Jean Shepard, dated May 16, 2007 from the beginning this treatment of my daughter 11/24/97 was abuse by this agency "we were told that my daughter 11/24/97, could not be told that I love her, she could not be told that any gifts were from me and she could not be told that I miss her", all of this to a special needs child who was well bonded to her mother and this agency needed grounds and set out to isolate the child from her mother. One of Plaintiff's council represented to Plaintiff "this agency will snap her mind like a twig and you won't even recognize her", he also made reference to this child being in Guantonamo Bay, and this DEFENDANT JULIE SMITH, clearly knew or should have known how this was detrimental to an already emotionally fragile child who had previously had to deal with abandonment issues. This Plaintiff also alleges that once you see the video statements of the children and L. Wilkerson, that one can clearly see that the statements attributed to the parties involved are almost verbatim in context, which most people realize particularly young children do not repeat exactly the same statements in the same manner, Plaintiff contends that these statements came from the video tape interviews which shows that DEFENDANTS JULIE SMITH reports came through interviews are false and further embellished by DEFENDANT JULIE SMITH.

On September 28, 2006 I wrote another letter to Ms. Shepard stating to her "because there are those in your agency who continue to omit and withhold the truth, I would like to make it clear that at no time have I given up my decision making parental rights afforded to me under the law. On August 28, 2006 Rebecca Slade called and asked me to sign a medical release for my children, she stated that they were not ill and I informed her that I wanted my daughter 11/24/97 to remain with her currant doctor", with no response. I attempted to keep Ms Shepard and Mary Harris apprised of almost everything that was happening to my children and what these particular social workers were doing, I received no help, simply more retaliation, if there was ever an investigation done, I was not notified.

However, on October 12, 2006 DEFENDANT JULIE SMITH prepared a report stating that she watched an entire evidentiary interview of my daughter 11/24/97 she goes on to say that my daughter "stated quietly that something bad had happened to her at home but she did not want to talk about it. She said that if she talked about it her mother would be very mad at her". My daughter made **no such statement; this is an intentional fabricated statement by social worker Julie Smith, under penalty of perjury.** DEFENDANT JULIE SMITH, was clearly aware that my daughter 11/24/97 was starting to deteriorate as indicated by her school IEP meeting, that took place without notice to me or attendance by me, even though I had full educational rights to my child who had an active IEP. The school IEP report dated 09/28/06 indicated that my child was "cursing, hitting, spitting, trying to run away and assaultive and missing school because of severe behaviors", however the agency later put forth that my daughter started to act out "once she made disclosures", which is the total opposite behaviors of my child under my care, and even though she knew this information, DEFENDANT JULIE SMITH continued to withhold this information. DEFENDANT JULIE SMITH, also indicate that there was a case plan attached to the October, 2006 report, again which is required by law within 60 days of detention, however I was never given a case plan or ever discussed a case plan with DEFENDNT JULIE SMITH. **the case plan that JULIE SMITH ATTACHED TO THE REPORT, again stated to the court under penalty of perjury, could never be found. This report,** which is more confusing on February 1, 2007 the judge indicates that the "case plan" was appropriate, and there is a letter from Julie Smith to my attorney at the time and his receipt of the case plan for his first viewing after February 1, 2007. DEFENDANT JULIE SMITH, stated that the scarring on my daughters feet and back were attributed to me, and that my daughter suffered from failure to thrive and knew or should have known that she was again fabricating these statements and withholding exculpatory information. Because DEFENDANT JULIE SMITH, knew that the nurse at my daughters school had faxed over an even healthier weight for my daughter, and she also knew that my daughter had these OLD DOCUMENTED SCARS on her feet, back, legs and arms that were documented in her adoption file since 2001, not only did she have ALL OF THIS INFORMATION, **she withheld this information from coming forward until February 1, 2007,** this information was given by me to Nadia Najors, Jean Shepard, Mary Harris, Julie Smith and at the time whom I believed was Dr. Chase, DEFENDANT JULIE SMITH also knew that my daughter 06/03/00 never stated that she witness abuse of her sister, her video statement was that "she denied witnessing abuse of her sister", though part of her words were left out in the typed narrative, which DEFENDANT JULIE SMITH, also watched the entire interview, my daughter 06/03/00 goes on to say that her sister does not have toys "she has Bratz", however this information was left out of the narrative to infer that she does not have toys at all, also my daughter says that she sleeps on the floor "on her floaty bed", however again this was left out to infer that she only sleeps on the floor, this was done with malicious intent to deny me the custody and care of my children. DEFENDANT JULIE SMITH, continued to withhold exculpatory information regarding my daughter 11/24/97 because she knew of my daughters diagnosed behaviors from her therapist, doctors and social workers who were previously assigned workers on the case and all had documented and stated the significant progress that my child 11/24/97 had made under my care, including the recent statements that were turned over to her in the full context of the interviews with my daughters teacher and the school nurse, however she continued to hold on to and refused to bring any of this information forward, that was all (exculpatory to me and certainly would have helped my child, who was clearly beginning to spiral out of control and reverting back to behaviors that she that she had long left behind, my daughter was frightened, she begged for help......and this agency did not like what she was saying and neither did her court appointed attorney Carolyn Levenberg).

JULIE SMITH, INTENTIONALLY SUPRESSED ANY AND ALL KNOWN EXCULPATORY INFORMATION, CAUSING THE COURT TO DETERMINE that my three minor children would remain in foster care, she even bolstered the reports by including a whole fabricated statement attributed to my daughter 11/24/97 that she never made, and old scarring on my daughter which she knew, according the the UCSD medical report documented and that the child had, when placed in my home for approximately 4 days which clearly states **(a thin petite child, no sign of trauma observed),** JULIE SMITH knew that my daughter had these old scars and never produced this information until, February 1, 2007, this was a clear conscious decision by DEFENDANT JULIE SMITH.

In January, 2007 Plaintiff had a telephone communication with Julie Smith set up a sibling visit for January 31, 2007, however the only child to show up was Elizabeth, she also scheduled our first and only face-to-face meeting to discuss the allegations since the children were taken into custody on August 17, 2006. JULIE SMITH, made an appointment to meet with Plaintiff in her home on January 30, 2007 at (9:00am). During that interview JULIE SMITH, was shown the entire house, she was shown a family table, she was shown the beds in all the bedrooms, she was shown the air beds for all three children, she was shown the pictures on the wall in the hallway, and of course I have always had utilities to my home, there was never any discussion about the size of my home which is approximately 2000sq feet, 4 bedroom and 2 1/1 bath home. We talked about the discipline of the children, she asked me why would L. Wilkerson make up the allegations and I told her once again that he was angry at me because he had hit my daughter 11/24/ 97 and I told him that he had to move. I also indicated while we were talking about why someone would make up a statement.

I specifically asked her about the evidentiary interview of my daughter 11/24/97 and the statement that she put into the report saying that my daughter made the following statement "something bad happened to her in that house and that mom would get mad if I told", I specifically asked her why would she put this into a report under penalty of perjury when she knew that my daughter never made such a statement, I specifically asked her "did you ever hear my daughter make such a statement", at first she stated "I'm not sure", then I said to her, "come on Julie, there is no one hear but you and I, did you ever hear my daughter make such a statement", she then stated "I don't think so". I go on to ask her then why would you lie on the statement of a child and claim to be protecting the child, her response was "we had some concerns", I asked her why this agency would tell the court about a Dr. Chase, when they knew that she was a nurse and not licensed to even diagnose, I went on to say to JULIE SMITH, that one could understand a concern, however I did not understand the intentional lies under penalty of perjury, and that this was hurting my children, we talked a while long and we concluded our interview and she left. I also wrote a letter to Jean Shepard stating this because of the lies by Julie Smith under penalty of perjury, that she had a vested interest that I don't reunify with my children and the retaliation continued.

Plaintiff is informed and believes, and on that basis allege, that a reasonable social worker, confronted with the same circumstances presented her, would have known (minus exigent circumstance) that the removal and continued detention of the minor children was unlawful and that it was a violation of Plaintiff's right arising under the Fourth and Fourteenth Amendments to the United States Constitution, not only did Plaintiff believe this she contacted the Director Jean Shepard and through letters indicated that her children were being held illegally, that the Police grabbed the children for the agency, because the agency had no grounds to remove any of the children, that the agency was hurting her children by holding on to them.

And this lead to more retaliation by DEFENDANT JULIE SMITH, she not only turned around and prepared **(two reports).** On February 1, 2007, Plaintiff was scheduled on calendar for a settlement conference, however DEFENDANT JULIE SMITH and DEFENDANT REBECCA SLADE prepared for that settlement conference by preparing and signing under penalty of perjury **(TWO), again without prior notice of jurisdictional/dispositional reports,** one a 3 page report dated February 1, 2007 and the other a 16 page report dated February 1, 2006. **(neither one of these reports given to Plaintiff as required by law),** five days before a hearing, however only knew that Plaintiff was attending a settlement conference. Of course Plaintiff realized that her children were not in custody on February 1, 2006 and as most reasonable people she knew this was simply a type-o, however this was something far more serious.

Reading the court transcripts the judge does not mention a 02/01/06 report, not even a correction in the record or an indication that this report was received, as required by law, there is only mention of a 02/01/07 report and each and every report prior was dismissed against me on that day. Both of these reports were signed by DEFENDANT REBECCA SLADE and DEFENDANT JULIE SMITH, Plaintiff alleges that she was not to know, nor did she know about the three page report, nor that county council indicates a report dated 02/01/07 because at the time of their response to this court, Plaintiff was not aware of this report and it is obvious that they were not bringing it forward on their own. DEFENDANT JULIE SMITH and REBECCA SLADE, dumped all of this discovery in a report dated 02/01/06 knowing that they had no intentions on honoring my stipulation and had no intentions on my reunifying with my children, their motives were to give me "an unfair advantage", in the dependency court action, which my stipulation and waiver of rights did, first it allowed them to file a 342 action, which they could not do without jurisdiction on the case and it barred me from a complete defense stating that all prior reports were adjudicated and this was a new 342 petition.

DEFENDANT JULIE SMITH, continued her assault and fabrications by stating in service log statements that she called Plaintiff's home to speak with L. Wilkerson and that she could hear the Plaintiff yelling in the back ground, when the Plaintiff never returned to the family home while L. Wilkerson was there, another fabrication, she goes on to state that Plaintiff threatened foster parents and their children, and Plaintiff can absolutely prove she has never threatened anyone in relationship to this case, child, parent, social worker, office worker or anyone else DEFENDANT JULIE SMITH continued to intentionally fabricate these statements, and acted with malice and with the intent to cause injury to

Plaintiff, or acted with willful and conscious disregard of the rights of Plaintiff and her children in a despicable manner. DEBORA DAVIES a LCSW, falsified statements attributed to the Plaintiff's child 11/24/97 and knew that she was falsifying in order to support the agency, not only did she know that this was a special needs child she clearly knew that she withheld information, took information out of context which not only caused a severe detriment to the child, she put forth this information in a court document to support the agency and caused harm. Plaintiff filed a complaint with the Board of Behavioral Sciences, however because minors council Carolyn Levenberg, held the privileged no investigation could be done without minors councils approval. Plaintiff is informed and believes that DEFENDANT: DEBORAH DAVIES LCSW, was acting under color of state law when she agreed, and or conspired to unlawfully falsify, take out of context and withheld exculpatory information to be used in a court document in support of detention of Plaintiff's minor children.

DEFENDANT: CHERYL ZIDE a LCSW, gave false statement regarding Plaintiff stating that Plaintiff had left her a threatening message, and wrote a threatening letter regarding her in a complaint, Plaintiff alleges that she has never spoken or left a message for DEFENDANT ZIDE, nor wrote a threatening letter to her or her place of employment. Plaintiff alleges that DEFENDANT ZIDE, intentionally used these statements in court documents to cause harm. Plaintiff is informed and believes that DEFENDANT ZIDE, acting un the color of state law when she acted, agreed, and or conspired to unlawfully give false statement to be used in a court document in support of detention of Plaintiff's minor children.

DEFENDANT: CAROLYN LEVENBERG, minors counsel has continually failed to follow requisite duties as a diligent advocate on behalf of the minors of the Plaintiff, as the minor's counsel she failed to properly initiate any good faith investigations as to the health and well being of her clients pursuant to WIC 317 (c), minors council had continually failed to follow requisite duties as a diligent advocate on behalf of the minor. Because minors counsel shall be charged in general with the representation of the child's interest. To that, the counsel shall make or cause to have made any further investigations that he or she deems in good faith to be reasonably necessary to ascertain the facts, including the interviewing of witnesses, and he or she shall examine and cross-examine witnesses in both the adjudicatory and dispositional hearings. In addition counsel shall investigate the interests of the child beyond the scope of the juvenile proceeding and report to the court other interest of the child that may need to be protected by the institution of other administrative or judicial proceedings. In this case minors council knew or should have known the suffering of the children, after reviewing case documents that clearly showed that Plaintiff did not cause injury to 11/24/97 these were old documented injuries. Plaintiff insisted on her child to remain with her currant treating doctor which would have been the most rational solution for the child because he had been treating the child for over two years without insodent, however minors council disagreed and aligned herself with the agency who sought of medical treatment and the child goes into convulsions and seizures, WIC (e). Early on in the proceedings sometime in September, 2006 minors counsel interviewed Plaintiff's husband and he gave her a statement stating that he had lied and that he would not speak with the agency again, because they had lied about what he had said, none of this information came forward on behalf of the child, she simply stayed the course and aligned herself with the agency, Plaintiff read about the continued assaults on her child 11/24/97 in the group home, her acting out so violently that she was put in restraints, running away, assaulting teachers, refusing medications and sexual assaults and not once did this court appointed attorney step out side of her alignment with the agency and seek to protect my child's interest.

When, Plaintiff complained about the none representation of the minors counsel, she soon resigned from the case, claiming a conflict, however once again Plaintiff was not notified of the court hearing and was not present at the time that new council was selected for the minor children. Plaintiff is informed and believes that on the basis alleges that minor council, failed to conduct her own investigation and relied on the social workers report which were false and violated Plaintiffs rights arising under the Fourth and Fourteenth Amendments to the United States constitution.

DEFENDANT: DR. MIRKARIMI, prepared a report for CPS after conducting a physical of Plaintiff's detained child 11/24/97, stating that on or about September 20, 2006 Plaintiff minor child weighed 60lbs and her height was 4 ½ , which made a very healthy child, however Dr. Mirkarimi began supplementing the child for weight gain with Ensure and **suddenly stops her medications.** Dr. Mirkarimi also stopped Plaintiff's child's medications without using the proper protocol and the child went into convulsion and seizure like episodes, which had never had before, the doctor also represents that the child 11/24/97 is currently taking no medications, which makes no sense because court documents show that Dr. Harinder Grewal prepared a court document on September 13, 2006 prescribing her medications. Plaintiff, alleges that this Defendant Dr. MIRKARIMI, was negligent in the medical treatment of Plaintiff's child causing not only suffering to the child also a detriment to the child. Plaintiff alleges that this defendant should have known that suddenly stopping Adderall, to this a child could cause severe damage and adverse effects, including seizures, rapid heart rate, fatigue, depression. Defendant Dr. MIRKARIMI, is being sued as a private citizen who conspired with a state actor, then the private citizen is subject to s 1983 liability, see Brokaw v. Mercer County, 235 F. 3d 1000 (7th Cir 2001) quoting Bowman v. City of Franklin, 980 F. 2d. 1104. 1107 (7th Cir. 1992). In certain instances the actions of private entities may be considered to be infused with "state action" if those private parties are performing a function public or governmental in nature and which would have to be performed by the Government but for the activities of the private parties. Perez v. Sugarman, 499 F 2d 761, 764-65 (2nd Cir 1974). See Evans v. Newton, 382 U.S. 296, 299 (1966)" Mora P. v. Rosemary McIntyre (Case No.: 98-9595) 2nd Cir (1999). Plaintiff is informed and believes and on that basis alleges, the this defendant acted with willful and conscious disregard of the rights of the minor child of Plaintiff in a despicable manner and gave a false statement of the condition of the child to support the agency's theory of failure to thrive when the child was clearly a very healthy and well nourished child, and conspired with these defendant to bolster support of a false allegation to deny Plaintiff care and custody of her children.

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DEFENDANT: DR. HARINDER GREWAL, stated and provided information to the court stating that she had a face to face with Plaintiff's 11/24/97 child on or about September 13, 2006 and the child weighed (40 lbs), which would certainly put the child at the 5th percentile, which is a far stretch from Dr. Mirkarimi on September 20, 2006 or Diana Chase, who states that she saw Plaintiff daughter 11/24/06 on

September 12, 2006 and she weighed (56 lbs). Plaintiff alleges that this defendant prepared a false report in support of the false allegations of failure to thrive, reduced the child weight to bolter a false allegation put forth by the agency. Plaintiff is informed and believes that on the basis alleges that DEFENDANT GREWAL, knew and should have known that her actions caused a detriment to a healthy child and prepared this false report and obtained no prior history from the treating doctor. DEFENDANT GREWAL, is being sued as a private citizen who conspired with a state actor, then the private citizen is subject to x 1983 liability, see Brokaw v. Mercer County, 235 F. 3d 1000 (7^{th} Cir 2001) quoting Bowman v. City of Franklin, 980 F. 2d 1104. 1107 (7^{th} Cir. 1992). In certain instances the actions of private entities may be considered to be infused with "state action", if those private parties are performing a function public or governmental in nature and which would have to be performed by the Government but for the activities of the private parties. Perez v. Sugarman, 499 F 2d 761, 764-65 (2^{nd} Cir 1974). See Evans v. Newton, 382 U.S. 296, 299 (1966)" Mora P. v. Rosemary McIntyre (Case No.: 98-9595) 2^{nd} Cir (1999). Plaintiff is informed and believes and on that basis alleges, that this defendant acted with willful and conscious disregard of the rights of the minor child of Plaintiff in a despicable manner and gave a false statement of the condition of the child to support the agency's theory of failure to thrive when the child was a clearly a very healthy and well nourished child, and conspired with these defendants to bolster support of a false allegation to deny Plaintiff the right to care and custody of her children.

DEFENDANT: DIANA CHASE, was introduced to me as Dr. Chase and never stated nor clarified the difference, Plaintiff believed at all time during her first an only interview that she was speaking with a doctor. DEFENDANT D. CHASE, falsified statement of the interview as to Plaintiff's 11/24/97 child, she also prepared a Child Abuse Index Report prior to Plaintiffs' arrest, and diagnosed the child with failure to thrive. Plaintiff alleges that this defendant acted with willful and conscious disregard of the rights of the minor child of Plaintiff and gave a false statement of the condition of the child to support the agency's theory of failure to thrive and even falsified the second reading as to the child's weight gain. Plaintiff found a witness to testify who was prepared to testify against DEFENDANT DIANA CHASE, Plaintiff turned in a curriculum vitea just prior to lunch, when returning from lunch the attorney from

Children's Hospital was waiting outside the court house and called my witness by name, then county council and minors council for 11/24/97 took her aside and when they were through with her, county council returned to court stating that my witness refused or changed her mind about testifying. DEFENDANT CHASE is being suited as a private citizen who conspired with a state actor, then the private citizen is subject to s 1983 liability, see Brokaw v. Mercer County, 235 F. 3d 1000 (7th Cir 2001) quoting Bowman v. City of Franklin, 980 F. 2d. 1104. 1107 (7th Cir. 1992). In certain instances the actions of private entities may be considered to be infused with "state action" if those private parties are performing a function public or governmental in nature and which would have to be performed by the Government but or the activities of the private parties. Perez v. Surgarman, 499 F. 2d 761, 764-65 (2nd Cir 1974). See Evans v. Newton, 382 U.S. 296, 299 (1966)" Mora P. v. Rosemary McIntyre (Case No.: 98-9595) 2nd Cir (1999). Plaintiff is informed and believes and on that basis alleges, that this defendant acted with willful and conscious disregard of the rights of the minor child of Plaintiff in a despicable manner and gave a false statement of the condition of the child to support the agency's theory of failure to thrive when the child was clearly a very healthy and well nourished child, and conspired with these defendants to bolster support of a false allegation.

I.

STANDARD OF REVIEW

A motion to dismiss pursuant to Rule 12 (b)(6) test the legal sufficiency of a claim. Navarro v. Block, 250 F. 3d 729, 732 (9th Cir. 2001). "A claim may be dismissed only if it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Id. In deciding on a motion to dismiss, the court should accept all material allegations of the complaint as true, as well as all reasonable inferences that can be drawn from them. Id. (citing Cahill v. Liberty Mut. Ins. Co., 80 F. 3d 336, 338 (9th Cir. 1996). A court should only dismiss a claim where there is no cognizable legal theory or an absence of sufficient facts alleged to support a cognizable legal theory. Id. (citing Balistreri v. Pacifica Police Dept. 901 F 2d. 696, 699 (9th Cir. 1988).

II.

At all times relevant to this complaint, Plaintiff Carmen Powell is a resident of San Diego County, California. Plaintiff is the mother of three minor children who were removed from the home of the plaintiff on August 17, 2006; the older teenage child who lived in the home was not removed. At all times applicable herein, Health and Human Services Agency ("HHSA"), was and is a subdivision or entity of the COUNTY OF SAN DIEGO and Chula Vista Police Department ("CVPD"), was and is an entity of the City of Chula Vista, is referred to as ("CITY").

This case arises from the unlawful seizure of three minor children from the care and custody of their mother, Carmen Powell, and the effort to permanently separate Ms. Powell from her children. the seizure of the children was without a court order or warrant, no immanent danger, or exigent circumstance. DEFENDANT N. NAJORS, determines after her investigation and interviews with the children, mother and father, school teacher, school nurse and a physical examination of one of the minor children 11/24/97 at Rady's Children's Hospital, there was no "signs of physical abuse, child was not in danger disposition home". DEFENDANT N. NAJORS, has a consult with Det. Ruth Heinzman of the Chula Vista Police Dept., and they come up with a plan of action to meet with L. Wilkerson husband of Carmen Powell at the V.A. Hospital after his dialysis treatment, again not to rush out to the home to save any of the children clearly no thought of (immanent danger or exigent circumstance). It is clear from reading the report that DEFENDANT N. NAJORS, tells DEFENDANT DET. HEINZMAN, "we had no grounds to remove any of the children"; the record indicates that this social worker did not seek a court order to remove any of the children. Nor is there any indication that the detective decided to rush to the home to save the children (**no immanent danger or probably cause to believe that any of the children were in danger in their home),** based on the same allegations that the detective read in the report, instead the plan of action was to meet with the husband at the V.A. Hospital. This was the beginning or the Plaintiff's Carmen Powell ordeal for almost almost two years after Defendants seized her children and the family has yet to be united. The children were seized without prior judicial authorization, and without any basis to believe the children were abused, neglected or in imminent threat of harm as stated by the DEFENDANT N. NAJORS who conducted the investigation and as concluded in the initial examination at Rady's Children Hospital by (Dr. Chase as stated in the report), who is later identified as a nurse not a doctor, the reported document describes a cooperative friendly, clean child with no sign of physical abuse, thin, disposition home.

Plaintiff alleges as follows:

PARTIES

At all times applicable herein, Defendant Social Worker Rebecca Slade, was an officer, agent and employee of ("HHSA").

At all times applicable herein, Defendant Social Worker Julie Smith, was an officer, agent, and employee of ("HHSA").

At all times applicable herein, Defendant Nadia Najors, was an officer, agent, and employee of ("HHSA")

At all times applicable herein, Defendant Deborah Davies, LCSW is an employee at Rady's Children's Hospital.

At all times applicable herein, Defendant Jean Shepard, Director, was an officer, agent, and employee of ("HHSA")

At all times applicable herein, Defendant Mary Harris, was an officer, agent and employee of ("HHSA")

At all times applicable herein, Defendant Lucia Garcia, Manager, was an officer, agent and employee of ("HHSA").

At all times applicable herein, Defendant Sophia Sanchez, was an officer, agent and employee of ("HHSA").

At all times applicable herein, Defendant Lisa Garcia, was an officer, agent and employee of the ("HHSA")

Defendant'S COUNTY, THROUGH ITS ("HHSA")

At all times applicable herein, Defendant CITY OF CHULA VISTA ,was and is a public entity ("CITY").

At all times applicable herein, Defendant CHULA VISTA POLICE DEPARTMENT ("CVPD").

At all times applicable herein Defendant Det. Ruth Heinzman, was an officer, agent and employee of ("CVPD").

At all times applicable herein Defendant Agt. Oyos, was an officer, agent and employee of the ("CVPD").

At all times applicable herein Defendant Agt. Anderson, was an officer, agent and employee of the ("CVPD").

At all times applicable herein Defendant Sgt. Servantes, was an officer, agent and employee of the ("CVPD").

Plaintiff is ignorant of the true names of each of the Police Officers or Social Workers Does 1 through 100, inclusive, and therefore sues them by such fictitious names. Plaintiff will amend this Complaint to show the true names and capacities of said DOE Defendants when they are ascertained.

Defendant:. Diana Chase

Defendant: Dr. Harinder Grewal

Defendant: Dr. M. Mirkarimi

Defendant: Carolyn Levenberg

Plaintiff is informed and believes, and thereon alleges, that each of the Defendants is responsible in some manner for the event and happenings referred to herein, and was the legal cause of injury and damages to Plaintiff as herein alleged.

Plaintiff is informed and believes, and thereon alleges, that each of the Defendants is responsible in some manner for the event and happenings referred to herein, and was the legal cause of injury and damages to Plaintiff as herein alleged. Plaintiff is informed and believes, and thereon allege, that at all times herein mentioned, each and every Defendant was the agent, employee, and/or state actor of their co-defendants, and each of them, acting at all relevant times herein under color of the authority of a governmental entity and under the statutes, ordinances, regulations, customs, and usage of the State of California and/or the United States Constitution and related laws…

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Ms Powell, begged the police to call her adult son and have him get the children, the social worker Nadia Najors was with the police in the home, there were people running all over the house, on man with a black bag started to run up stairs and almost knocked the Plaintiff over, at no time was there any discussion as to what they were looking for, nor was I presented with a search warrant and they even took my purse out of my home, stating that they were taking it for safe keeping. I asked them if they could not handcuff me in front of my children, I can still see the look on the children's faces they look so confused and frightened. I immediately told the oldest minor to take care of your baby sister and brother and I gave them a kiss.

I was taken to jail where I set for hours where I was chained to a wall at the Chula Vista Police Department, I was kept in jail from August 17, 2006 until I was released on Monday when I was transported to court and the bailiff informed me that the court did not except my case and I was free to go. I had been notified that there was a hearing regarding the children and that I was to be present on August 22, 2006. **AND THE NIGHTMARE BEGINS FOR MY FAMILY**

FIRST CLAIM OF RELEIF

ASSAULT

BY PLAINTIFF Carmen Powell

AGAINST CVPD, CITY OF CHULA VISTA DEFENDANTS

DOES 1 THROUGH 100

Plaintiff reallege, and to the extent applicable, incorporate herein as if set forth in full.

All Defendants, and each of them, with the encouragement, knowledge, advice, counsel and or at the request, direction, authorization and or agreement of the other defendants, by their conduct cause and or intended to cause plaintiff great apprehension and fear of harmful contact to her person. The imminent harmful contact included, but was not limited to, plaintiff's removal, and detention as stated herein, and by making false accusations of assault and threats to a spouse, and stated witnessed by minor children for use as testimony and evidence in the aforementioned in the dependency matter, then later stating that the Plaintiff hit the minor child on the hand with a belt or cord causing injury, where the child had no injury, no documented injury, no photo of injury and the child never made such statement. As a direct and proximate result of defendant's tortuous and unlawful conduct, plaintiff has suffered extreme emotional and physical distress, including anguish and fear to an extent in an amount to be proven at trial. Defendants acted with malice and with the intent to cause injury to Plaintiff Carmen Powell or acted with a willful and conscious disregard of the rights of Plaintiff in a despicable manner. Therefore, Plaintiff is entitled to an award of punitive damages for the purpose of punishing said Defendants and to deter them and others from such conduct in the future.

Defendants, and each of them, intentionally deprived Plaintiff of her freedom of movement by the use of physical barriers, menace, fraud, deceit, and unreasonable duress, without evidence of any imminent danger of serious physical injury to any child, without court order, without just or reasonable cause, and therefore deprived her of her personal and civil liberties. The unlawful removals and detentions commenced on August 17, 2006. Defendant COUNTY AND IT'S ENTITY ("HHSA" are vicariously responsible for the conduct of the SOCIAL WORKER DEFENDANTS, AND DOES 1 through 100, inclusive, under Government Code Section 815.2 and applicable other statutory and case law. As the direct and proximate result of these defendants' actions, Plaintiff Carmen Powell was physically, mentally and emotionally violated and or injured, all to an extent and in an amount subject to proof at trial. SOCIAL WORKER DEFENDANTS and DOES 1 THROUGH 100 ACTED with malice and with the intent of cause injury to Plaintiff Carmen Powell, or acted with a willful and conscious disregard of the rights of Plaintiff Carmen Powell in a despicable manner. Therefore, Plaintiff is entitled to an award of punitive damages for the purposes of punishing said Defendants and to deter them and others from such conduct in the future.

SECOND CLAIM FOR RELIEF:

FALSE IMPRISONMENT

BY PLAINTIFF Carmen Powell

CVPD AND CITY OF CHULA VISTA, AND DEFENDANTS DOES 1 THROUGH 100

Plaintiffs reallege, and to the extent applicable, incorporate herein as if set forth in full, defendants, and each of them, with the encouragement, knowledge, advice, council and or at the request, direction, authorization and or agreement of the other defendants, acted with the intent to make, and did make, or caused or allowed others to make, harmful and unconsented contact with plaintiffs body as she was unlawfully removed and detained from August 17, 2006 to August 21, 2006 in order to seize Plaintiff's children, at no time did plaintiff constructively or otherwise consent to such contact(s), nor was legal consent obtained by law, by court order of immanent danger or exigent circumstance in regards to plaintiffs children. As a direct and proximate result of these defendants' actions, plaintiff was physically, mentally and emotionally violated and or injured, all to an extent and in an amount subject to proof at trial. Defendants City ("CITY OF CHULA VISTA) and Defendants Chula Vista Police Department et al., are responsible for their conduct and acted with malice and with the intent to cause injury to plaintiff, or acted with a willful and conscious disregard of the rights of plaintiff in a despicable manner. Therefore, plaintiff is entitled to an award of punitive damages for the purpose of punishing said defendants and to deter them and others from such conduct in the future.

THIRD CLAIM OF RELEIF

BATTERY

BY PLAINTIFF Carmen Powell

CHVD AND CITY OF CHULA VISTA, DEFENDANTS

DOES 1 Through 100

Plaintiffs reallege, and to the extent applicable, incorporate by reference as if set forth, on August 17, 2006 and continuing through present, the Chula Vista Police Department and social worker defendants, and each of them inclusive were acting under color of state law when they acted, agreed, and or conspired to unlawfully seize, removed, and detain plaintiffs minor children from the home and the custody and care of plaintiff. Social worker defendants, and each of them inclusive and the Chula Vista Police Department, did so without a warrant, court order, probable cause, circumstance, consent, or other prior authorization. Social worker defendants assisted with seizure and removal of minor children of the plaintiff, without exigent circumstances, i.e., without reasonable cause to believe that any of the children were in imminent danger of serious bodily injury or death upon entering the home. Finally, even if there were exigent circumstances (which plaintiff adamantly denies, and which evidence did not show), the scope and degree of defendant's intrusion was not justified by the alleged exigency and the plaintiff insisted that the minor children be turned over to their adult sibling, where there no allegations made against him who was willing an able to take minor children. By their actions, social worker defendants, and each of them, have violated plaintiffs right under the Fourth Amendment of the United States Constitution to be from the unreasonable seizure of her person, as well as those right under applicable California law rising to the level of a constitutionally protected right. Defendant County and its entity ("HHSA") are vicariously responsible for the conduct of the social worker defendants and inclusive, under Government Code Section 815.2 and other applicable statutory and case law. As a direct result of these social worker defendants violations, an in accordance with 42 U.S.C. Section 1983, plaintiffs civil rights have been violated in the she has suffered, and will continue to suffer, damages, including but not limited to, physical and or mental anxiety and anguish, as well as incur, and continue to incur, attorneys fees, cost and expenses in the underlying case and in this matter, as authorized by 42 U.S.C. Section 1988 in an amount not yet ascertained, all of which shall be shown according to proof at trial.

Social worker defendant's and the Chula Vista Police Department defendants wrongful conduct as herein alleged was intentional and malicious, or was done with a willful and conscious disregard for the rights of plaintiff, to deny Plaintiff of her care and custody of her children. As a result of this despicable conduct, plaintiff is entitled to recover punitive damages from Social Worker Defendants and the Chula Vista Police Department, only in an amount commensurate with the nature of the Defendants wrongful acts and the amount of the defendant's wealth.

FOURTH CLAIM OF RELEIF

BY PLAINTIFF CARMEN POWELL

UNREASONABLE SEARCH AND SEIZURE

CHVD AND CITY OF CHULA VISTA, SOCIL WORKER DEFNDANTS

DOES 1 THROUGH 100

Plaintiff's reallege, and to the extent applicable, incorporate herein as set forth in full. Under the circumstances, Plaintiff had a right to be free from unreasonable searches under the Fourth Amendment of the United States Constitution. On August 17, 2006, all Social Worker Defendants and CVPD Defendants were acting under color of state law when they agreed, and or conspired to enter the dwelling of, search, question, and intimidate Plaintiff, conduct was without proper justification or authority, and without probable cause, consent, exigency, or court order. (See Rogers v County of San Joaquin (2007) 487 F. 3d 1288; Mabe v County of San Bernadino (2001) 237 F.3d 1101). Further, Social Worker Nadia Najors, had interviewed all the children and knew that their statements were consistent (no domestic violence in the home), further one minor child 11/24/97 was seen at Rady's Children's Hospital a day or two before, disposition (home), NO PHYSICAL SIGNS OF ABUSE, no immanent danger or exigent circumstance. Defendant's actions were taken with deliberate indifference to Plaintiffs rights. Fourth Amendment of the United States Constitution by, but not limited to, entering and conducting an unreasonable search of Plaintiffs home, without a warrant, consent of Plaintiff, probable cause, or exigent circumstance, in violation of Plaintiffs right to be free from unreasonable search and seizure under the Fourth Amendment, as well as those rights under applicable California law rising to the level of a constitutionally protected rights. Defendant County and its entity ("HHSA") and CITY OF CHULA VISTA, CVPD are vicariously responsible for the conduct of the Social Worker Defendants and the CVPD are responsible for the conduct of Police Officer Defendants and DOES 1 through 100, and Defendant social workers under Government Code Section 815.2 and applicable other statutory and case law. As a direct result of these Defendants violation, and in accordance with 42 U.S.C Section 1983, Plaintiffs civil rights have been violated in that she has suffered, and will continue to suffer, damages, including but not limited to, physical and/or mental anxiety and anguish, as well as to incur, and continue to incur, attorneys fees, costs and expenses in the underlying case and in this matter, as authorized by 42 U.S.C. Section 1988 in an amount not yet ascertained, all of which shall be shown according to proof at trial. Chula Vista Police and Social Worker Defendants wrongful conduct as herein alleged was intentional and malicious, or was done with a willful and conscious disregard for the rights of the Plaintiff and to deny her the right to care and custody of her children. As a result of the despicable conduct, Plaintiff is entitled to recover punitive damages.

FIFTH CLAIM FOR RELIEF:

VIOLATION OF CIVIL RIGHTS 42 U.S.C. s 1983

Fourteenth Amendment, Unlawful Seizure

CVPD and CITY OF CHULA VISTA DOES 1 through 100

Plaintiff reallege, and to the extent applicable, incorporate herein as if set forth in full, under the circumstances, Plaintiff had a reasonable expectation of privacy in conducting their personal activities in her private dwelling without observation, intrusion, or interference. On August 17, 2006 CVPD, and DOES 1 through 100, inclusive, invaded Plaintiffs right to privacy by entering and searching Plaintiff dwelling without a search warrant by Plaintiff, consent given by Plaintiff, probable cause, or exigent circumstance. Police defendants were acting or purporting to act in the performance of their official duties, and even if they believed there was probable cause (once they entered and found the children unharmed and healthy and the social worker had the children's statements that they never witnessed Domestic Violence, and the police never asked the children if they witnessed domestic violence, which was the pretext for my arrest, according to the Police report. In addition, commencing on August 17, 2006. Plaintiff believe that Defendants and each of them, were acting or purporting to act in the performance of their official duties when they aided, abetted, agreed, and/or conspired to unlawfully search, remove, detain, question, threaten, examine, investigate, and/or report Plaintiff without proper justification or authority, and without probable cause, exigency, or court order, to seize the children for ("HHSA) because the agency had no legal grounds for such a seizure or removal. (See Rogers v County of San Joaquin (2007) 487 F 3d 1288; Mabe v County of San Bernadino (2001) 237 F 3d. 1101). Further, Defendants actions were taken with deliberate indifference of Plaintiffs rights. Police Defendants, and Social Worker Defendants each of them, conspired to violate the civil rights of the Plaintiffs, including

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violation of several rights found in the fourteenth Amendment of the United States Constitution, by, but not limited to, aiding and abetting in the search, removal, detention, and continued detention of Plaintiffs minor children to deny her the care and custody of her children. By these actions, Defendants interfered and/or attempted to interfere with Plaintiffs constitutional rights to procedural due process, familial relations, and privacy under the Fourteenth Amendment, as well as those rights under applicable California Law rising to the level of a constitutionally protected right.

Defendant City and CVPD are vicariously responsible for the conduct of the Police Defendants un Government Code Section 815.2 and applicable other statutory and case law. As a direct and legal result of Police Defendants conduct, Plaintiff has suffered, and will continue to suffer, damages, including but not limited to, physical and/or mental anxiety and anguish, as well as to incur, and continue to incur, attorneys fees, costs and expenses in the underlying case and in this matter, in an amount not yet ascertained, all of which shall be show according to proof at trial. Police Defendants, wrongful conduct as herein allege was intentional and malicious, or was done with a willful and conscious disregard for the rights of the Plaintiffs. As a result of this despicable conduct, Plaintiff is therefore entitled to recover punitive damages from Police Defendants, only in an amount commensurate with the nature of the Defendants wrongful acts and the amount of the Defendants wealth.

SIXTH CLAIM OF RELEIF

BY PLAINTIFF CARMEN POWELL

VIOLATION OF 42 U.S.C. s 1985

Against all Social Worker Defendants and all Police Defendants, and Does 1 through 100, inclusive

Plaintiff reallege and to the extent applicable, incorporate herein as if set forth in full, Social Worker Defendants, and each of them, Police Defendants, and each of them, and DOES 1 through 100, inclusive, conspired to deprive Plaintiff of her rights under the laws of the United States, Social Worker Defendants, Police Defendants and DOES 1 through 100, inclusive, conspired to go enter and search the premises of Plaintiffs home, and unlawfully seized and removed minor children, from her home and the care of the mother Carmen Powell, without a warrant, court order, consent, probable cause, or exigent circumstances (belief that minor was in imminent danger of serious physical injury), clearly not the belief of the Social Work or the Police, Social Worker Nadia Najors tells Det Heinzman (we had no grounds to remove any of the children), and Plaintiff contends that even thought the Police removed the children, CPS had no grounds as required by law to hold onto the children. Further support, at no time did Social Worker Nadia Najors mention to Det Ruth Heinzmen that she would seek a court order for removal, instead they make plans to see L. Wilkerson at the VA Hospital, again Det Heinzman states that she reviewed the report and does not state any urgency to go to the home to remove the children because of the belief there was exigent circumstances or imminent danger of serious physical injury).

In addition, Social Worker Defendants, and each of them, and DOES 1 through 100, inclusive, conspired to detain minors children, beyond a reasonable period by requesting a continuance during the detention phase, because the children did not corroborate the statements of L. Wilkerson, who had also recanted. They went on a fishing expedition and used coercion and isolation on a special needs child, denying the child the right to see her mother, denying the child gifts from her mother, denying the family from telling the child that she is loved by her mother and leading the child to believe that the mother did not love her, along with total undue influence under the care and custody of the child, to brake the familial bond with the mother. The Social Workers conspired and used trickery, duress, fabrication and/or false testimony or evidence, and failed to disclose exculpatory evidence, in preparing and presenting reports and court documents to the court, causing an interference with the Plaintiffs rights, including those as to familial relations. Defendants, and each of them, engaged in said conspiracies for the purposes of depriving Plaintiff of equal protection of the laws of the State of California and of the United States. The conspiracy was motivated by invidious discrimination against Plaintiff and retaliation.

Defendants, and each of them, took several acts in furtherance of the conspiracy, including but not limited to: entering and searching Plaintiffs dwelling without a warrant to do so, nor court order, consent by Plaintiff, nor probable cause, or exigent circumstances; unlawfully removing Plaintiffs minor children from her home and the care of the mother and procuring false testimony, fabricating evidence, and failing to disclose exculpatory evidence in preparing and presenting reports and court documents to the Count in relation to the dependency proceedings, Defendants got other to falsify the weight of Plaintiff's special needs child, stopped the child's medications without proper protocol as reported to social worker Julie Smith. Plaintiff did suffer the deprivation of numerous rights granted to citizens of the United States, including those under the Fourteenth Amendment that protect against unreasonable search and seizure, and those under the Due Process Clause of the Fourteenth Amendment, which has been interpreted to protect the fundamental liberty interest in familial relations.

Defendants actions are the direct and proximate cause of injuries to Plaintiff as alleged herein; and as a result, Plaintiff has sustained general and special damages, as well as incurring and continuing to incur, attorneys fees, costs and expenses, including those as authorized by 42 U.S.C. Section 1988, to an extent and in an amount subject to proof at trial.

SEVENTH CLAIM FOR RELIEF

BY PLAINTIFF CARMEN POWELL

VIOLATION OF 42 U.S.C. S 1986

("HHSA County") AND CVPD and CITY OF CHULA VISTA

DEFENDANTS 1 THROUGH 100

Plaintiffs reallege, and to the extent applicable, incorporate herein as if set forth in full, Social Workers Defendants maintain, and at all times relevant to this Complaint maintained, customs and practices which were the driving force behind their conspiracy to interfere with Plaintiffs civil rights in violation of 42 U.S.C. section 1985. Such customs and practices include unreasonable searches and seizures in violation of the Fourth Amendment of the U.S. Constitution; unlawful removal and detention of minor children; and the procuring of false testimony, fabrication of evidence, and refusal to disclose exculpatory evidence in preparing and presenting reports and court documents to the Court in relation to dependency proceedings, all in violation of the right to familial relations under the Due Process Clause of the Fourteenth Amendment.

Police Defendants maintain, and at all times relevant to this Complaint maintained, customs and practices which were the driving force behind their conspiracy to interfere with Plaintiffs civil rights in violation of 42 U.S.C. section 1985. Such customs include allowing and participating in the unlawful entry and search of Plaintiffs dwelling, without a warrant, consent of Plaintiff, probable cause, or exigent circumstances, in violation of the Fourth Amendment, which protects against unreasonable searches and seizures, and the Fourteenth Amendment, which protects a citizen's right to privacy in conducting her personal activities without observation, intrusion, or interference. Defendants County, SDCSSA and City and CVPD knew that Police Defendants, Social Worker Defendants, and DOES 1 through 100 were conspiring to commit wrongs and were going to commit them. Defendants Counts, SDCSSA, City and CVPD had the power to prevent the commission of these wrongs, through the implementation of policies, procedures, and training programs that would educate and enlighten their employees as to the civil rights of the citizens of the United States and the State of Calif. As a matter of fact Plaintiff wrote to the Director of SDCSSA, Jean Shephard, Mary Harris of the Ombudsmen of ("HHSA"), making them aware of the false statements by the social workers in court reports and the illegal seizure of the minor children, and the mental health of Plaintiff's husband, and he also wrote the agency. Plaintiff was sent a letter by the assistant deputy director stating Rene Santiago, stating that he was responding on behalf of Jean Shephard, stating that the ("HHSA") did not take her children that they were removed by law enforcement because of domestic violence and turned over to (HHSA") and they decided to detain the children, when they had no grounds for removal of the children. The law does not afford fishing expeditions into family's lives to find cause where this agency clearly established they had none. Once the Plaintiff made these complaints, the false statements escalated which Plaintiff believes was in retaliation for filing complaints against the agency and writing and documenting through letters.

Despite their knowledge, Defendants County, ("HHSA), City and CVPD refused or neglected to prevent Police Defendants, Social Worker Defendants and Does 1 through 100 from committing these wrongs in violation of 42 U.S.C. section 1985. Plaintiff did in fact suffer the deprivation of numerous rights granted to citizens of the United States, including those under the Fourth Amendment that protect against unreasonable search and seizure, and those under the Fourteenth Amendment protecting the rights to privacy and familial relations. Plaintiff's injuries were the direct and proximate result of the actions of Police Defendants, Social Worker Defendants, and Does 1 through 100, inclusive, which Defendants County, ("HHSA"), City and CVPD could have, through reasonable diligence, prevented. As a result of the inaction of County, ("HHSA"), City and CVPD, Plaintiff has sustained general and special damages, as well as incurring, and continuing to incur, attorneys fees, costs and expenses, including those as authorized by 42 U.S.C. Section 1988, to an extent and in an amount subject to proof at trial.

EIGTH CLAIM FOR RELIEF:

MONELL RELATED CLAIMS

Against County and SDCSSA

Plaintiff reallege, and to the extent applicable, incorporate herein as if set forth in full, Defendant County, including through its SDCSSA entity, established and/or followed policies, procedures, customs, and/or practices (hereinafter referred to collectively as "policy" or "policies") which policies were the moving force behind the violations of Plaintiffs constitutional rights, including those under the Fourth and Fourteenth Amendments, by, but not limited to:

- the policy of detaining and/or removing children from their family and homes
- without exigent circumstances (imminent danger or serious physical injury), court order and/or consent;
- the policy of removing children from the care of their family and from their homes without first obtaining a warrant when no exigency exists;
- the policy of examining children without exigency, need, or proper court order and without the presence of their proper custodian and/or guardian;
- the policy of removing and detaining children, and not returning them, beyond a reasonable period after the basis for detention is negated; and asking for an extension of time to further investigate because the children denied any abuse or witnessing domestic violence in the home.
- the policy of using trickery, duress, fabrication and/or false testimony or evidence,
- and in failing to disclose exculpatory evidence, in preparing and presenting reports and court documents to the Court causing an interference with the Plaintiffs rights,

including those as to familial relations and injuring and harming them; and by acting with deliberate indifference in implementing a policy of inadequate training, and/ or by failing to train its officers, agents, employees and state actors, in providing the Constitutional protections guaranteed to individuals, including those under the Fourth and Fourteenth Amendments, when performing actions related to child abuse and dependency type proceedings. (This list is not exhaustive due to the pending nature of discovery and the privilege and protected records of investigative and juvenile dependency type proceedings.)

Defendant County, including by and through its entity ("HHSA"), each had a duty to Plaintiff at all times to establish, implement and follow policies, procedures, customs and/or practices which confirm and provide for the protections guaranteed them under the United States Constitution, including the Fourth and Fourteenth amendments; to use reasonable care to select, supervise, train, control and review the activities of all of their agents, officers, employees and those acting under them, including within ("HHSA"); and further, to refrain from acting with deliberate indifference to the Constitutional rights of Plaintiff herein so as to cause them the injuries and damages alleged herein.

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County breached its duties and obligations to Plaintiffs including but not limited to, failing to establish, implement and follow the correct and proper Constitutional policies, procedures, customs and practices; by failing to properly select, supervise, train, control, and review their agents and employees as to their compliance with Constitutional safeguards; and by permitting the Social Worker Defendants, and Does 1 through 100, inclusive, to engage in the unlawful and unconstitutional conduct as herein alleged.

Defendants knew, or should have known, **and through Plaintiffs attempts through letters to the Director Jean Shepard and upper level management and management,** that by breaching the above-mentioned duties and obligations that it was foreseeable that they would, and did, cause Plaintiffs to be injured and damaged by their wrongful policies and acts as alleged herein, and that such breaches occurred in contravention of public policy and their legal duties and obligations to Plaintiffs; and that such policies would subject them to injunctive relief which Plaintiffs assert herein. These actions, and/or herein; and as a result, Plaintiffs have sustained general and special damages, as well as incurring, and continuing to incur, attorneys fees, costs and expenses, including those as authorized by 42 U.S.C. Section 1988, to an extent and in an amount subject to proof at trial.

NINTH CLAIM FOR RELIEF:
MONELL RELATED CLAIMS
AGAINST CITY OF CHULA VISTA and CVPD

Plaintiffs reallege, and to the extent applicable, incorporate herein as if set fort in full, at all times relevant herein, Defendant City, including through its CVPD entity, established and/or followed policies, procedures, customs, and/or practices (hereinafter referred to collectively as "policy" or "policies") which policies were the case of violations of Plaintiffs constitutional rights, including those under the Fourth and Fourteenth Amendments, by, but not limited to:

- the policy of entering and searching the dwelling of a party without probable cause
- to believe that the suspect subject to the arrest warrant is inside;
- the policy of inviting agents of unrelated agencies to enter the private dwelling of another without a search warrant;
- aiding and abetting in the violation of civil rights guaranteed to individuals, including those under the Fourth (protecting against unreasonable search and seizure) and Fourteenth (protecting against invasion of autonomy privacy) amendments, by engaging in the aforementioned conduct;
- conspiring to violate civil rights guaranteed to individuals, including those under the Fourth (protecting against unreasonable search and seizure) and Fourteenth (protecting against invasion of autonomy privacy) amendments, by engaging in the

aforementioned conduct. (This list is no exhaustive due to the pending nature of discovery and the privileged and protected records of investigative and juvenile dependency type proceedings.)

Defendant City, as well as CVPD, as agency or agent of the City, had a duty to Plaintiff at all times to establish, implement and follow policies, procedures, customs and/or practices which confirm and provide for the protections guaranteed them under the United States Constitution, including the Fourth and Fourteenth amendments; to use reasonable care to select, supervise, train, control and review the activities of all of their agents, officers, employees and those acting under them, including within CVPD; and further, to refrain from acting with deliberate indifference to the Constitutional rights of Plaintiffs so as to not cause her the injuries and damages alleged herein. City breached its duties and obligations to Plaintiffs including but not limited to, failing to establish, implement and follow the correct and proper Constitutional policies, procedures, customs and practices; by failing to properly select, supervise, train, control and review their agents and employees as to their compliance with Constitutional safeguards; and by permitting the Police Defendants to engage in the unlawful and unconstitutional conduct herein alleged.

Defendants knew, or should have known, that by breaching the above-mentioned duties and obligations that it was foreseeable that they would, and did, cause Plaintiff to be injured and damaged by their wrongful policies and acts as alleged herein, and the such breaches occurred in contravention of public policy and their legal duties and obligations to Plaintiffs; and that such policies would subject them to injunctive relief which Plaintiff assert herein and Plaintiff filed a complaint regarding their unlawful actions. These actions, and/or inactions, of Defendants are the direct and proximate cause of injuries to Plaintiff as alleged herein; and as a result, Plaintiff have sustained general and special damages, as well as incurring, and continuing to incur, attorneys fees, costs and expenses, including, as well as incurring, and continuing to incur, attorneys fees, costs and expenses, including those as authorized by 42 U.S.C. Section 1988, to an extent and in an amount subject to proof at trial.

TENTH CLAIM FOR RELIEF:

VIOLATION OF STATE CIVIL RIGHTS

AGAINST COUNTY, SDCSSA, ("HHSA") Social Worker

DEFENDANTS 1 THROUGH 100

Plaintiff reallege, and to the extent applicable, incorporate herein as if set forth in full, each of the Social Worker Defendants, and Does 1 through 100, inclusive, are individuals who were acting under color of law in conducting an investigation and related proceedings and matters as described in Government Code section 820.21 (a). As a result of Defendants, conduct, set forth at length above, Defendants and each of them by the use of threats, intimidation, and coercion, (or attempts to threaten, intimidate, or coerce), interfered with Plaintiffs exercise and enjoyment of the rights secured by the United States Constitution and other Federal laws, and the Constitution and laws of the State of California, including but not limited to Government Code Section 820.21. Defendants did so by, but not limited to, the fabrication of evidence, failure to disclose exculpatory evidence, and by obtaining, and/or attempting to obtain, testimony by duress, fraud and undue influence, as incorporated above.

The acts of Defendants, and each of them, as previously alleged in this Complaint and incorporated by this reference herein to the extent applicable, interfered, or attempted to interfere, with the exercise of Plaintiffs rights under the laws and Constitution of the State of California, including the Plaintiffs rights of privacy, and those rights under Civil Code sections 43,49,51,52.1 and other applicable state and federal laws. Defendant County and its entity SDCSSA are vicariously responsible for the conduct of the Social Worker Defendants, and Does 1 through 100, Inclusive, under California Government Code Section 815.2 and applicable other statutory and case law. As a direct and proximate result of the aforementioned conduct of Defendants, and each of them, Plaintiff has suffered and will continue to suffer great emotional and psychological distress, humiliation and mental anguish, the nature and amount of which will be shown according to proof at trial.

The rights violated by Defendants, and each of them, are protected by California Civil Code sections 43,39,51, and 52.1, which entitled Plaintiff to compensatory and punitive damages, injunctive relief, statutory civil penalty (including $25,000.00 as to each individual Defendant) and attorneys fees, as provided by laws and the Constitution of the State of California and are requested herein. In doing the acts alleged in this Complaint, Defendants, and each of them, knew or should have known, that their actions would, or were likely to, injure and damage Plaintiff, and Plaintiff is informed and believes, and thereon allege, that the Defendants, and each of them, intended to cause injury and damage to Plaintiff, and/ or acted with a willful and conscious disregard to Plaintiffs rights, thus entitling Plaintiffs to recover punitive damages as against Social Worker Defendants and Does 1 through 100, inclusive.

ELEVENTH CLAIM FOR RELIEF

VIOLATION OF STATE CIVIL RIGHTS

AGAINST CITY OF CHULA VISTA AND CVPD,

AND DEFENDANTS 1 THROUGH 100

Plaintiffs reallege, and to the extent applicable, incorporate herein as if set forth in full, all of the Police Defendants, and each of them, are individuals who were acting under color of law in conducting an investigation and related proceedings and matters as described in Government Code section 820.21 (a). As a result of Defendants conduct, set forth at length above, Defendants and each of them, by the use of threats, intimidation, coercion, (or attempts to threaten, intimidate, or coerce), interfered with Plaintiffs exercise and enjoyment of the rights secured by the United States Constitution and other Federal laws, and the Constitution and laws of the State of California, including but not limited to Government Code Section 820.21, by fabrication of evidence, failure to disclose exculpatory evidence, and/or obtaining, and/or attempting to obtain, testimony by duress, fraud and undue influence, as incorporated above. The acts of Defendants and each of them as previously alleged in this Complaint and incorporated by this reference herein to the extent applicable, interfered, or attempted to interfere, with the exercise of Plaintiffs rights under the laws and Constitution of the State of California, including the Plaintiffs rights of privacy, and those rights under Civil Code Defendant City and its entity CVPD are vicariously responsible for the conduct of the Police Defendants, under California Government Code Section 815.2 and applicable other statutory and case law.

As a direct and proximate result of the aforementioned conduct of Defendants, and each of them, Plaintiffs have suffered and will continue to suffer great emotional and psychological distress, humiliation and mental anguish, the nature and amount of which will be shown according to proof at trial. The rights violated by Defendants, and each of them, are protected by California Civil Code sections 43, 49, and 52.1, which entitle Plaintiff to compensatory and punitive damages, injunctive relief, statutory civil penalty (including $25,000 as to each individual Defendant) and attorneys fees, as provided by laws and the Constitution of the State of California and are requested herein. In doing the acts alleged in this Complaint, Defendants, and each of them, knew or should have know, that their actions would, or were likely to, injure and damage Plaintiff, and Plaintiff would or was likely to, injure and damage Plaintiff, and intended to cause injury and damage to Plaintiff, and/or acted with a willful and conscious disregard of Plaintiffs rights, thus entitling Plaintiffs to recover punitive damages as against Police Defendants.

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TWELTH CLAIM FOR RELIEF

VIOLATIONS OF THE UNRUH CIVIL RIGHTS ACT

AGAINST COUNTY, ("HHSA"), Social Worker Defendants

And Does 1 through 100, Inclusive

Plaintiffs reallege, and to the extent applicable, incorporate herein as if set forth in full, Plaintiff Carmen Powell, claims that Defendants County, SDCSSA, Social Worker Defendants, and Does 1 through 100, inclusive, have denied, and/or incited the denial of her full and equal advantages, privileges, and services. The motivating reason for Defendants conduct was their perception and that Plaintiff and her entire family were all liars, the implication that the family eats pigs feet, black eyed peas and smother cabbage and Plaintiff was asked to describe how to cook and prepare during trial, the facts that statements attributed to the family through "ebonics", the implication that one of the minor children primary language is Spanish, when the agency knows that the child was placed with the mother at birth and brought home from the hospital is a direct result of racial bias, the child's primary language is English, that Plaintiff was confronted with this Civil Rights complaint and asked to state on the record what was not true in the complaint, Plaintiff stated that she was in the process of amending her complaint and did not wish to address in Superior Court, Plaintiff believes that this Civil Action is a direct result of prejustice against her in Superior Court. Defendants have and had a vested interest that Plaintiffs children not be returned, even though the children were suffering emotionally and physically and continue to cry and beg to come home because of retaliation and the filing of the Civil Rights Complaint, Plaintiff continues to suffer and witness the abuse, injuries and suffering of her children and Plaintiff has never seen one of her special needs children since the day of removal on August 17, 2006. Social Workers intentionally falsified statements attributed to the Plaintiff and her children, as a direct and legal result of Defendants discriminatory conduct, Plaintiff Carmen Powell has suffered and will continue to suffer severe emotional and psychological distress, humiliation and mental anguish, the nature and amount of which will be shown according to proof at trial. Plaintiff Carmen Powell was and is severely hurt and offended by these comments and their implications. As a direct and legal result of Defendants discriminatory conduct, Plaintiff Carmen Powell has also suffered injury to her right to familial association guaranteed to her under the laws of the State of California under Sections 43 and 49 of the Civil Code.

THIRTEENTH CLAIM FOR RELIEF:

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

BY PLAINTIFF CARMEN POWELL, AGAINST ("HHSA"), SOCIAL

WORKERS DEFENDANTS AND DOES 1 THROUGH 100, INCLUSIVE

Plaintiff's reallege, and to the extent applicable, incorporate herein as if set forth in full, Social Worker

Defendant Rabecca Slade, Julie Smith, Nadia Najors, Megan Petfinger, Deborah Davies, and Does 1 through 100, inclusive, engaged in the above-mentioned extreme, outrageous, unlawful and unprivileged conduct, including, but not limited to, performing an unlawful search of Plaintiffs dwelling; unlawfulling removing, detaining, and continuing to detain minors from Plaintiff, from her home and the care of mother Plaintiff Carmen Powell; questioning and obtaining testimony from Plaintiffs minor children through the use of undue influence, coercion, and duress, and maliciously failing to provide exculpatory evidence, and falsely and maliciously alleging and reporting facts that they knew were not true, and attributing hearsay statements to parties who will come into this court and testify that they never made such statements to the Police or this agency. Defendants intentionally withheld old documented injuries that were on the child when she was placed with Plaintiff as a foster child and built their case around these old documented scars, defendants used a nurse at Children Hospital and told the court in a detention report under penalty of perjury that nurse Chase was a doctor, Plaintiff alleges that defendants also had a doctor supplement her child's body to gain weight quickly in order to say that the child failed to thrive in the Plaintiffs care, defendants isolated this special needs child from her entire family for almost six months, even though they knew that the child was emotionally fragile. The Defendants were well aware of the Plaintiffs reporting to the Director of the agency and on February 1, 2007 the agency dismissed the charges against the Plaintiff including reports dated 08/22/06 through 02/01/07, these reports are the basis for this Plaintiffs actions. Plaintiff learned that her special needs child through documents turned over in a report dated 02/01/06, which should have been 02/01/07, that her child under state custody, suffered convulsion and seizure like episodes, became assaultive, spitting, cursing, acting out sexually, runs away from school, being picked up by the police or sheriff and the agency attributes these behaviors to the abuse of the Plaintiff, which is direct contradiction to the childs behaviors while in the care and custody of the mother, described by people who say her on a regular basis as being loving and happy.

As a direct and proximate result of Defendants extreme and outrageous conduct, caused Plaintiff Carmen Powell has suffered extreme emotional and physical distress, including, but not limited to, fright, vomiting, frequent nose bleeds, nervousness, sleeplessness, anxiety, worry, mortification, shock, humiliation and indignity to an extent and in amount subject to proof at trial.

Social Worker Defendants acted knowing and willfully, with malice and oppression, and with the intent to harm Plaintiff in a despicable manner. Therefore, Plaintiff is entitled to an award of punitive damages for the purpose of punishing Social Worker Defendants and to deter them and others from such conduct in the future.

FOURTEEN CLAIM FOR RELIEF

BY PLAINTIFF CARMEN POWELL

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

AGAINST CITY OF CHULA VISTA AND CVPD Defendants

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Plaintiff reallege, and to the extent applicable, incorporate herein as if set forth in full, Defendants Police Officers Det Ruth Heinzman, Sgt Cervantes, Det Anderson, Agt Oyos, and Does 1 through 100, engaged in extreme, outrageous, and unprivileged conduct when they entered and search Plaintiffs residence without a search warrant, removed items from home including Plaintiffs purse, without consent of Plaintiff, probably cause, or exigent circumstances, thereby causing intentional emotional distress to Plaintiff. Defendants, and each of them, intended to cause harm to Plaintiff, by falsifying statement in police reports that the Plaintiff had struck minor child with a belt or cord and caused injury, or acted with a reckless disregard of the possibility that Plaintiff would suffer extreme emotion distress. Defendants City and CVPD are vicariously responsible for the conduct of these Defendants under Government Code section 815.2, and other applicable statutory and case.

As the direct and legal result of Defendants extreme and outrageous conduct, Plaintiff suffered, and continues to suffer, severe emotional and physical distress including, but not limited to, fright, nervousness, sleeplessness, anxiety, vomiting, frequent nose bleeds, worry, mortification, shock, humiliation and indignity to an extent and in an amount subject to proof at trial. Police Defendants acted knowingly and willfully, with malice and oppression, and with the intent to harm Plaintiff in a despicable manner. Therefore, Plaintiff is entitled to an award of punitive damages for the purpose of punishing Defendants and to deter them and others from such conduct in the future.

FIFTEENTH CLAIM FOR RELIEF:

INJUNCTIVE RELIEF

Against All Defendants

Plaintiff reallege, and to the extent applicable, incorporate herein as if set forth in full, as stated herein, Plaintiff, as citizen and individuals, are protected by the laws of the State of California, as well as those of the United States Constitution, including the Fourth and Fourteenth Amendments thereto.

As stated herein, Defendants County, SDCSSA ("HHSA"), Social Worker Defendants, City, CVPD, Police Defendants, and Does 1 through 100, inclusive, have wrongfully, unlawfully, and with deliberate indifference to the rights of Plaintiffs, and with utter disregard of Defendants duties and obligations to Plaintiffs, acted, practiced and/or adopted policies, practices, procedures and/or customs which are in violation of the rights of Plaintiff, including those to be free from governmental interference as to their familial association and from unreasonable searches or seizures, including those relating to child abuse allegations and related actions and proceedings.

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Defendants have failed to acknowledge their improper, unlawful and unconstitutional actions, conduct and policies at the time of the incident at issue in the present action, and Plaintiff is informed and believes, and on that basis allege, that presently Defendant have not changed or modified such actions, conduct and/or policies to conform to law. Defendants wrongful and unlawful conduct, actions and/or policies, unless and until enjoined and restrained by order of this court, will cause, and continue to cause, great and irreparable injury to Plaintiff, and other individuals and citizens, and the Defendants will continue to act in accordance with said unlawful policies, and with deliberate indifference to their duties and obligations under state and federal law, including those under the Fourth and Fourteenth amendments as alleged herein above.

Plaintiffs have no adequate remedy at law to prevent or prohibit Defendants from continuing, and/or repeating, their unlawful and unconstitutional conduct and policies other than through injunctive relief, and therefore seek an order enjoining and prohibiting Defendants from, but not limited to, the following"

- the policy of detaining and/or removing children from their families and homes without exigent circumstances (imminent danger of serious physical injury), court order and/or consent;
- the policy of removing children from the care of their family and from their homes without first obtaining a warrant when no exigency exists;
- the policy of examining children without exigency, need, or proper court order, and
- without the presence of their proper custodian and/or guardian;
- the policy of removing and detaining children, and not returning them, beyond a reasonable period after the basis for detention is negated;
- the policy of using trickery, duress, fabrication and/or false testimony or evidence, and in failing to disclose exculpatory evidence, in preparing and presenting reports and court documents to the Court causing an interference with the Plaintiffs rights, including those as to familial relations and injuring and harming them; and by acting with deliberate indifference in implementing a policy of inadequate training, and/or by failing to train its officers, agents, employees and state actors, in providing the Constitutional protections guaranteed to individuals, including those under the Fourth and Fourteenth Amendments, when performing actions related to child abuse and dependency type proceedings.
- Aiding and abetting in the violation of civil rights guaranteed to individuals, including those under the Fourth (protecting against unreasonable search and seizure) and Fourteenth (protecting against invasion of autonomy privacy) Amendments, by engaging in the aforementioned conduct;
- Conspiring to violate civil rights guaranteed to individuals, including those under the Fourth (protecting against unreasonable search and seizure) and Fourteenth (protecting

against invasion of autonomy privacy) Amendments, by engaging in the aforementioned conduct.

Plaintiff has been and continues to be subjected to retaliation by the defendants and other involved, she is insulted by court appointed council stating that she complains about the system, or that she may need a guardian ad litem, when she attempts to seek council she is described as difficult and over baring by the attorneys in Superior Court and Plaintiff will continue to exhaust every legal avenue afforded each and every citizen of this country.

PRAYER

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

1.. Plaintiff demands a jury trial as to the issues so tribal;

2. General damages and special damages according to proof;

3. Punitive damages as allowed by law;

4. Attorneys fees pursuant to 42 U.S.C. s 1988, and any other appropriate statue;

5. Injunctive relief, both preliminary and permanent, as allowed by law, (including preliminary injunctive relief based upon a separate application);

6. Costs of suit incurred herein; and

7. Such further relief as the Court deems just and proper.

CASE LAW ATTACHED

Dated: August 22, 2008

By: ______________________
Carmen Powell, Plaintiff In Pro Se

Beltran v. Santa Clara County, 514 F.3d 906, (9th Cir. 2008) Beltrans sued two caseworkers under 42 U.S.C. 1983, charging constitutional violations in removing child from their custody and attempting to place him under the supervision of the state by fabricating evidence.

Court overruled Doe v. Lebbos, and reversed the district court's ruling that defendants were entitled to absolute immunity.

Brokaw v. Mercer County, 235 F.3d 1000, (7th Cir. 2000) In 1983, three-year old A.D. Brokaw was removed from her parents' home based on allegations of child neglect. After she turned eighteen, she sued her paternal grandfather, aunt, and uncle, alleging that they conspired to violate her constitutional rights by reporting false claims of child neglect. A.D. also sued the various state actors and agencies involved in removing her from her parents' custody. The district court held that A.D.'s suit was barred by the Rooker-Feldman doctrine because, in effect, A.D. was challenging the validity of the state removal proceedings. The Eleventh Circuit reversed and remanded.

Calabretta v. Floyd, 189 F.3d 808 (9th Cir. 1999) "This case involves whether a social worker and a police officer were entitled to qualified immunity, for a coerced entry into a home to investigate suspected child abuse, interrogation of a child, and strip search of a child, conducted without a search warrant and without a special exigency." Can you guess what the answer was? "An unlawful entry or search of a home does not end when the government officials walk across the threshold. It continues as they impose their will on the residents of the home in which they have no right to be."

Chavez v. Board of County Commissioners, 2001-NMCA-065, New Mexico Court of Appeals (2001) Defendants are deputy sheriffs with the Curry County Sheriff's Department, who were called to assist two social workers from the Children, Youth & Families Department on a "child welfare check" at Plaintiff's home. Plaintiff's son had not been attending elementary school. Thus, one reason for the visit to Plaintiff's home was to investigate suspected truancy or educational neglect. Held: "At the time of entry into Plaintiff's home, it was well-settled that the Fourth Amendment to the United States Constitution prohibited unreasonable searches and seizures and was intended to protect the sanctity of an individual's home and privacy."

Croft v. Westmoreland County Children and Youth Servs., 103 F.3d 1123 (3d Cir. 1997) Holding that "a state has no interest in protecting children from their parents unless it has some reasonable and articulable evidence giving rise to a reasonable suspicion that a child has been abused or is in imminent danger of abuse."

Doe v. Gooden, 214 F.3d 952 (8th Cir. 2000) School district officials can be liable under 1983 if they are deliberately indifferent to acts committed by a teacher that violate a student's constitutional rights.

Franz v. United States, 707 F 2d 582, US Ct App (1983) "The undesirability of cultural homogenization would lead us to oppose efforts by the state to assume a greater role in children's development, even if we were confident that the state were capable of doing so effectively and intelligently. " A brilliant analysis of the fundamental right to be free of unwarranted state interference between the child-parent bond, in this case stemming from the Witness Protection Program.

Good v. Dauphin County Soc. Servs. for Children and Youth, 891 F.2d 1087, (3d Cir. 1989) "[P] hysical entry into the home is the chief evil against which the ... Fourth Amendment is directed," the Court explained, while adding: "It is a 'basic principle of Fourth Amendment law' that searches and seizures inside a home without a warrant are presumptively unreasonable. " No qualified immunity claim to be found here. Heartland Acad.

Cmty. Church v. Waddle, 335 F.3d 684, (8th Cir.2003) Waddle, as Chief Juvenile Officer for the Second Circuit of Missouri, effected the removal of 115 boarding students from Heartland Christian Academy . Waddle had obtained ex parte probable-cause state-court orders to remove some of the boarding students, there were no orders of any kind to remove many of the students who were taken from the school. This case is noted for its brilliant analysis of Eleventh Amendment sovereign immunity, the Rooker-Feldman doctrine, and immunity as an officer of a juvenile court. The court held that: "any single violation of Heartland's federal constitutional rights in this case would be sufficient to sustain Heartland's claim for injunctive relief under ' 1983."

Jones v. Hunt, 410 F.3d 1221 (10th Cir. 2005) No qualified immunity in this ' 1983 action for alleged violations of Fourth Amendment rights arising from girl's in-school seizure by a deputy sheriff and s Social Worker Supervisor for the New Mexico Children, Youth, and Families Department ("CYFD"). "We conclude that the Fourth Amendment violation as alleged in this case is both obvious and outrageous."

Kelson v. Springfield, 767 F 2d 651, (9th Cir. 1985) "Supreme Court and Ninth Circuit precedent establish that a parent has a constitutionally protected liberty interest in the companionship and society of his or her child. The state's interference with that liberty interest without due process of law is remediable under section 1983."

Lopkof v. Slater, 103 F.3d 144 (10th Cir. 1996) (Unpublished) Defendants do not dispute that the law was clearly established that a warrantless search of a private residence is per se unreasonable under the Fourth Amendment unless one of "a few specifically established and well-delineated exceptions" applies. Defendants maintain that because they had "received specific information questioning the safety of children," they acted in an objectively reasonable manner when they entered Lopkoff's private residence. Wrong, and no qualified immunity for these officers.

Loudermilk v. Arpaio, 2007 U.S. Dist. LEXIS 76819 (D. Ariz. September 27, 2007) With respect to Plaintiffs' claim based on violation of the Fourteenth Amendment, parents and children have a constitutional right to live together without governmental interference and will not be separated without due process of law except in emergencies. Motion to dismiss by CPS worker and others who coerced entry into home denied.

Mabe v. San Bernardino, 237 F.3d 1101 (9th Cir. 2001) Section 1983 creates a cause of action against any person who, acting under color of state law, violates the constitutional rights of another person. Whether reasonable cause to believe exigent circumstances existed in a given situation, "and the related questions, are all questions of fact to be determined by a jury." Hence, no immunity for social worker under 42 U.S.C. 1983.

NEW! Michael v. Gresbach, (7th Cir. 2008) The court held that: "a reasonable child welfare worker would have known that conducting a search of a child's body under his clothes, on private property, without consent or the presence of any other exception to the warrant requirement of the Fourth Amendment, is in direct violation of the child's constitutional right to be free from unreasonable searches." No qualified immunity for this CPS caseworker! The court also held that the state statute that allowed for "investigations" on private property without a search warrant was itself unconstitutional as applied.

Malik v. Arapahoe County Dept. of Soc. Servs.191 F.3d 1306, (10th Cir. 1999) "The defense of qualified immunity protects government officials from individual liability under 42 U.S.C. ' 1983 for actions taken while performing discretionary functions, unless their conduct violates "clearly established statutory or constitutional rights of which a reasonable person would have known." Court also held that: "it was clearly established law that, except in extraordinary circumstances, a parent has a liberty interest in familial association and privacy that cannot be violated without adequate pre-deprivation procedures."

Norfleet v. Arkansas Dept. of Human Servs., 989 F.2d 289 (8th Cir. 1993) Court denies qualified immunity to the Human Services Director and caseworker involved because the state obligation to provide adequate medical care, protection, and supervision with respect to children placed in foster care was well established as of 1991.

Parkhurst v. Trapp, 77 F.3d 707 (3rd Cir. 1996) The defendants attempt to avoid the imposition of summary judgment by arguing that, even if their conduct violated the Fourth Amendment, qualified immunity should shield them fro m liability. Qualified immunity is available to state actors in Section 1983 suits if those actors reasonably believed that their conduct was lawful. However, a good faith belief in the legality of conduct is not sufficient. Held: No qualified immunity.

Ram v. Rubin, 118 F.3d 1306 (9th Cir. 1997) Holding "a parent has a constitutionally protected right to the care and custody of his children and he cannot be summarily deprived of custody without notice and a hearing except when the children are in imminent danger." No qualified immunity for social worker who removed child not in imminent danger.

Rogers v. County of San Joaquin, 487 F.3d 1288 (9th Cir. 2007) Court held: "the rights of families to be free from governmental interference and arbitrary state action are also important. Thus, we must balance, on the one hand, the need to protect children from abuse and neglect and, on the other, the preservation of the essential privacy and liberty interests that families are guaranteed under both the Fourth and Fourteenth Amendments of our Constitution. " Section 1983 case reinforces that removal of children from home by caseworker absent either a warrant or exigent circumstances violates those rights, and therefore no qualified immunity applies to caseworker.

Roska v. Peterson, 328 F.3d 1230, (10 Cir. 2003) Holding no immunity for caseworkers who entered a home lacking either exigency or a warrant, and finding constitutional protection in the right to maintain a family relationship, Court held: "the law is now clearly established that, absent probable cause and a warrant or exigent circumstances, social workers may not enter an individual's home for the purpose of taking a child into protective custody."

Tennenbaum v. Williams, 193 F.3d 581, (2d Cir. 1999) "We affirm the judgment insofar as it holds that the medical examination violated the Tenenbaums' and Sarah's procedural due-process rights and Sarah's Fourth Amendment rights and awards damages therefore. . . We conclude, however, that there is a triable issue of fact as to whether the defendants' removal of Sarah from school was contrary to the procedural requirements of the Due Process Clause and to Sarah's right to be free from unreasonable seizures under the Fourth Amendment." The Missouri Bar has an informative Courts Bulletin describing the case.

Turner v. Houseman, Docket: 07-6108 (10th Cir. 2008) (Unpublished) "It was clearly established, at least two years before the events in question, that absent probable cause and a warrant or exigent circumstances, neither police nor social workers may enter a person's home without a valid consent, even for the purpose of taking a child into custody, much less to conduct a search. It was also established that the warrantless seizure and detention of a person without probable cause or exigent circumstances, as alleged in Turner's petition, is unreasonable ."

Wallis v. Spencer, 202 F.3d 1126 (9th Cir. 2000) "In cases of alleged child abuse, governmental failure to abide by constitutional constraints may have deleterious long-term consequences for the child and, indeed, for the entire family. Ill-considered and improper governmental action may create significant injury where no problem of any kind previously existed."

Walsh v. Erie County Dep't of Job & Family Servs., 240 F. Supp. 2d 731, (N.D. Ohio 2003) "Despite the Defendants' exaggerated view of their powers, the Fourth Amendment applies to them, as it does to all other officers and agents of the state whose requests to enter, however benign or well-intentioned, are met by a closed door. . . Any agency that expects to send its employees routinely into private homes has a fundamental obligation to ensure that those employees understand the constitutional limits on their authority."

Weller v. Dept of Soc. Servs., 901 F.2d 387, (4th Cir. 1990) "Substantive due process does not categorically bar the government from altering parental custody rights." What I find interesting about this case is that it was brought pro se, and that he sued a lot more people than I am.

Whisman v. Rinehart, 119 F.3d 1303 (8th Cir. 1997) Whismans filed this action against juvenile officers and social workers, claiming they violated plaintiffs' constitutional rights of familial association, denying plaintiffs due process of law. Defendants filed a motion to dismiss, contending that plaintiffs' claims were not actionable under 42 U.S.C. 1983. Guess again!

Wooley v. City of Baton Rouge, 211 F.3d 913, (5th Cir. 2000) Holding that a "child's right to family integrity is concomitant to that of a parent. No qualified immunity for police officers who removed young child in this section 1983 action.

Civil Case No. 07 CV 1836

CIVIL CASE NO. 07 CV 1836 (JAH) (JMA)

Declaration of Service, I Carmen Powell placed a copy in a separate envelope addressed to the following individuals, with postage full prepaid, for each addressee named below and depositing each in the U.S. Mail at San Diego, Calif.

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I am over the age of 18, and reside in the County of San Diego, I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct.

__________________________ **August 22, 2008**
Carmen Powell